Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re Applications of		
The Lutheran Church/Missouri Synod	)	MM Docket No. 94-10
	)	
For Renewal of Licenses of Stations KFUO/KFUO-FM, Clayton, Missouri	)	File Nos. BR-890829VC BRH-890929VB

TO: Hon. Arthur Steinberg, Administrative Law Judge

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FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE MISSOURI STATE CONFERENCE OF BRANCHES OF THE NAACP, THE ST. LOUIS BRANCH OF THE NAACP, AND THE ST. LOUIS COUNTY BRANCH OF THE NAACP

VOLUME III

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CONCLUSIONS OF LAW

A. KFUO Violated Every One Of The Twelve Sections And Subsections Of The EEO Rule

291. The statistical record is as plain as the tail on an elephant's behind. Possessed with the burden of proof, KFUO did not prove that it hired one African American except for a position as a secretary, receptionist or janitor. KFUO did not prove that it interviewed one African American except for a position as a secretary, receptionist or janitor. KFUO did not prove that it even received an application from one African American except for a position as a secretary, receptionist or janitor. See ¶¶43-47 supra. Compare Dixie Broadcasting, Inc., 8 FCC Rcd 4386 (ALJ, 1993) ("Dixie"), ¶133 (licensee in EEO and EEO/misrepresentation hearing exceeded 100% of parity in overall hiring).

292. No more complete shut-out of African Americans from broadcast opportunity has appeared in the Commission's annals in this generation.

293. A reasonably fair employer with KFUO's 84 hiring opportunities might have chosen ten or twenty African Americans. Owing to the genetically random distribution of talent and ability, some of them would have attained responsible positions. But because of KFUO's behavior, those ten or twenty people were unlawfully deprived of a chance, an income -- a career. They are the reason we are all here trying this case.

294. We engage first the question of scienter. The Courts have made it hornbook law that intentional discrimination is always, case closed, disqualifying.47/ But no non-suicidal businessperson stands up in court, as though closing out an episode of "Perry Mason," exclaiming "It was me! I did it! Yes Yes I'm guilty! I discriminated! Please stop me before I discriminate again!"

295. Thus it is no surprise that cases adjudicating admitted discrimination have not arisen since the 1960's. See Heart of Atlanta Motel, Inc. v. U.S., 379 U.S. 241 (1964), in which a unanimous Supreme Court declared that yes, there is room at the inn. Consequently, ascertaining discriminatory intent is always driven by inference. And it is steered by common sense. If the law depended on violators to come forward and admit their wrongdoing, the police would be repairing Maytags. That is why smoking gun proof of discriminatory intent is not required. As the Commission has held, "it is the consequences of the licensee's employment practices, not the intent, which determines whether discrimination requiring remedial action exists." Federal Broadcasting System, Inc. (HDO), 59 FCC2d 356, 364 ¶27 (1976) ("Federal") (emphasis in original; citing, inter alia, Diaz v. Pan American Airways, 422 F.2d 385 (D.C. Cir. 1971)). Here we are blessed or damned with an abundance of both consequences and intent, either of which is sufficient to support denial of renewal; but to preserve the record, we focus below on intent.

47/ "It is now far beyond dispute that broadcasters must not intentionally discriminate, and that past activity of that nature will justify, if not demand, nonrenewal of a communications license." Judge Spottswood W. Robinson III, dissenting in part in Bilingual II, supra, 595 F.2d at 640.

296. Was KFUO's record a bizarre accident? Or perhaps did it rise from the cauldron of confluence of dozens of simultaneous accidents? For KFUO's record to have been accidental, every KFUO manager would have had to awaken daily in this majority Black city governed by a Black mayor and represented by a Black Member of Congress, watch the local morning news with Black reporters and anchors visible on every channel, send his children off to the 90% Black public schools, receive his Egg McMuffin and his change from a Black sales clerk, drive to his job at these radio stations situated adjacent to a Black neighborhood, and still fail to notice -- for seven years -- that no Black people worked there except to answer the telephones, type the letters and take out the trash.

297. No, this was not an accident, unless the Commission indulges the fiction that human beings are all blind to color. At one time, as the late Ralph Ellison reminded us, a person of African descent in America was The Invisible Man. We thank Rosa Parks that no American is invisible anymore.

298. Was KFUO's record gross negligence, the broadcast equivalent of driving blindfolded into a crowd of passersby? No. Gross negligence is impossible with so many people in charge. And KFUO had roughly a dozen people in senior positions over the license term. See Joint Ex. 1. Any one of them -- if he cared to do so -- could have steered KFUO's car away from the passersby.48/

48/ Compare Dixie, supra ¶119 and n. 10 (attributing misrepresentations to gross negligence and thus imposing the maximum allowable forfeiture rather than denying renewal. In Dixie, the licensee was a family owned business run by one person who devooted most of his waking hours to the task and rarely took vacations. Id., ¶6. With only one person running the store, it's not unusual that some things will be neglected, even grossly.

299. Was the Commission asking too much? We know the industry norm because the Commission has maintained normative data since 1971. The license term's data is in the record. See ¶¶40-42 supra. The other commercial classical stations in cities demographically similar to St. Louis have had no problem attracting African Americans for responsible positions. Some -- KKGO-FM, Los Angeles, WMFT-FM, Chicago, WFLN-AM-FM, Philadelphia, WTMI-FM, Miami -- do a wonderful job. St. Louis isn't a tiny place: the Commission has expected compliance in communities far less fertile with qualified people. See, e.g., Rust Communications Group (HDO), 53 FCC2d 355 (1975) ("Rust") (involving 6.5% minority Rochester, NY).

300. The 1980s witnessed the invasion of broadcasting by the "Me Generation." Like Ronald Reagan, they weren't aware there was still race discrimination. They never picked up a phone to perform an ascertainment. They never underwent the trial by ordeal of a comparative hearing. They have no recollection of Office of Communication of the United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966) unless they read about it in a Broadcast History class. "Red Lion -- wasn't that a Disney movie?" they would guess. As broadcast station owners, they often had to receive EEO sanctions to be reminded of the social compact contained in the small print they overlooked when they signed their first Form 314 applications.

301. KFUO was not one of these nouveau broadcasters. The Synod began operating KFUO(AM) five years after the Springfield Riots, and it began operating KFUO(FM) the year President Truman desegregated the Army. KFUO had esteemed counsel since at least the 1960's -- a delightful gentlemen who was elected President of the communications bar nineteen years ago. In KFUO's time, persons of African descent came to expect to be treated like men and women.

302. With its geography and its history, how but through deliberate intent could KFUO have somehow succeeded in violating each and every section and subsection of the EEO Rule? For that is exactly what happened.

303. EEO Violation #1. We begin our journey through 47 CFR §73.2080 with §73.2080(a), the nondiscrimination provision. It has two prongs.

304. The first prong requires each station to provide "[e]qual opportunity in employment...to all qualified persons[.]" As shown in ¶¶310-331 infra, KFUO's violations of §73.2080(b) and (c) were so palpable that they cannot be termed neutral or negligent. This isn't a case in which a licensee violated one or two sections of the Rule, and it isn't a case in which the licensee was unsophisticated. Nor was this a case in which the licensee intended a result which was not carried out by persons who it promptly fired.

305. Gross affirmative action violations signal gross discrimination. It is impossible to violate every section of the Commission's plain English EEO Rule without having intended to discriminate. The courts have often held that an employer's aggravated failure to comply with a required affirmative action program signals the existence of undisclosed but intentional discrimination.49/ This theme in civil rights law is echoed in FCC cases, starting with Bilingual II, which noted that

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49/ Craik v. Minnesota State University Board, 731 F.2d 465, 472 (8th Cir. 1984); Garland v. USAir, 767 F.Supp. 715, 726 (W.D. Pa. 1991). At a minimum, the FCC must consider the provative value of such evidence. Gonzalez v. Police Dept., City of San Jose, California, 901 F.2d 758 (9th Cir. 1990); Yatvin v. Madison Metropolitan School District, 840 F.2d 412, 415-416 (7th Cir. 1988); Taylor v. Teletype Corp., 648 F.2d 1129, 1135 n. 14 (8th Cir.), cert denied, 454 U.S. 969 (1981); Chang v. University of Rhode Island, 606 F.Supp. 1161, 1183 (D.R.I. 1985).

> a substantial statistical disparity, especially when coupled with a languishing affirmative plan, raises questions as to whether the station's poor EEO performance owes to inadvertence, or to intentional discrimination.

Id., 595 F.2d at 630.

306. If any more proof is needed of KFUO's intentions, look at the massive coverup KFUO undertook, replete with what has to be an all time FCC record in the sheer numerosity of material misrepresentations. See ¶¶218-290 supra. As the Court reminded us not long ago, there is no better signal of discriminatory intent than repeated misrepresentations or a coverup. Beaumont NAACP v. FCC, 854 F.2d 501 (D.C. Cir. 1988).

307. Intent to discriminate is frequently inferred in civil rights cases when a defendant indulges pretextual excuses for its misconduct. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 255 and n. 10 (1981). KFUO trotted out virtually every pretext known to EEO law -- our managers turned over (see ¶¶168-202); we had no money (see ¶¶159-167); we didn't pay much (see ¶¶61-65); our lawyer didn't stop us (see ¶¶203-217); Blacks don't listen to our stations anyway (see ¶¶250-278); you have to be a Lutheran to answer our phones properly (see ¶¶70-107); we get free rent from a 99% white school (see ¶¶51-60). There was no substance, no evidence supporting any of these pretexts. If there had been a coherent, honest explanation for what happened, KFUO would hardly have needed to dip into the cookie jar of pretexts.

308. KFUO also violated the second prong of §73.2080(a), which states that "no person shall be discriminated against in employment by such stations because of race, color, religion, national origin or sex." KFUO prevented itself the messy task of waging a ground war against in personam job applicants by conducting preemptive air strikes in the form of procedures designed to ensure that African Americans -- even the 2% of Lutherans who are African Americans -- would virtually never learn of job openings. See ¶¶113-151 supra.

309. And if an African American who was not a Lutheran should have happened by mistake to walk into KFUO seeking employment, she would have encountered the most hostile of environments. She would have seen African Americans holding no responsible positions. She would have read openly discriminatory position guides were posted on the wall. See ¶110 supra. She might have been handed an application form which, unlike virtually every employment application form used anywhere in American commerce, contained no EEO notification but instead inquired into her religious beliefs and expressly advised her that if she wasn't a Lutheran she could not expect "preference" for a job. See ¶¶152-153 supra; see Federal, supra, 59 FCC2d at ¶¶26-27 (licensee used separate "male" and "female" application forms for announcer and secretary jobs respectively). Mercifully, she might not have been told that KFUO defined her qualifications for employment based on her private choice of music to hear on the radio, a qualification never used for persons who don't look like her. See ¶¶250-278 supra. Nor -- like the FCC -- would she have been informed that the only surefire way to get a job is to enroll in 99% White Concordia Seminary or marry someone who is. See ¶¶51-65 supra.

310. EEO Violation #2. KFUO violated §73.2080(b), requiring each station to "establish, maintain, and carry out a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of station employment policy and practice." As shown below, KFUO never had an EEO program except in writing. There were no specific practices to "maintain" or "carry out" except specific discriminatory practices.

311. EEO Violation #3. KFUO violated §73.2080(b)(1), requiring each station to "[d]efine the responsibility of each level of management to ensure a positive application and vigorous enforcement of its policy of equal opportunity, and establish a procedure to review and control managerial and supervisory performance." KFUO blamed "management turnover" for its failure to recruit and hire minorities, as though it was the fault of the former managers. KFUO produced no evidence that it ever seriously instructed each -- or any -- of its managers to implement the Commission's EEO requirements. When the two senior officials found themselves sharing EEO responsibility for the latter half of 1989, they did not discuss how to apportion those responsibilities and they did nothing. See ¶¶131-178 supra. These two senior people had been warned to comply, twice, in writing, by a former general manager. One of them had had several conversations with counsel and had received several letters from counsel, and it was license renewal time. See ¶¶180-217 supra. EEO arose at one meeting of the Board of Communications Services, but the discussion was limited to only one of dozens of recommendations of former General Manager Tom Lauher. Even that recommendation was carried out such that it increased unlawful discrimination. See ¶¶197-200 supra. Thus, KFUO did not act neutrally. It discriminated affirmatively.

312. EEO Violation #4. KFUO violated §73.2080(b)(2), requiring each station to "inform its employees...of the positive equal employment opportunity policy and program and enlist their cooperation." KFUO did not give its employees a personnel manual until 1986. When it finally did, the manual did not contain the EEO program. Instead, one of its 53 items was a generic nondiscrimination statement -- in an appendix, right next to Christmas Gifts and Rental and Utility Allowances. See ¶¶48-50 supra. KFUO did post job notices on bulletin boards, but the notices contained expressly discriminatory language and thus would hardly have encouraged employees to help recruit minorities. See ¶110 supra. Again, KFUO did not act neutrally. It discriminated affirmatively.

313. EEO Violation #5. KFUO violated §73.2080(b)(3), requiring each station to "[c]ommunicate its equal employment opportunity policy and program to sources of qualified applicants without regard to race, color, religion, national origin or sex, and solicit their recruitment assistance on a continuing basis." KFUO's idea of how to do this was to write a single license renewal insurance form letter a few weeks before filing the renewal applications. See ¶¶126-130 supra. Even that letter didn't go to any minority sources; the manager who sent it had attended a license renewal seminar on EEO but didn't know that the NAACP does job referrals.50/ The letter promised job notices, but KFUO did not send any. Again, KFUO did not act neutrally. It discriminated affirmatively.

50/ Anyone who reads Broadcasting could hardly have missed the fact that throughout the license term, the Executive Director of the NAACP was a former Commissioner of the FCC, Dr. Benjamin L. Hooks.

314. EEO Violation #6. KFUO violated §73.2080(b)(4), requiring each station to "[c]onduct a continuing program to exclude all unlawful forms of prejudice or discrimination based on race, color, religion, national origin or sex from its personnel policies and practices and working conditions[.]" Quite the opposite happened. KFUO maintained, for at least sixteen types of positions, Duty Descriptions and Position Guides which listed no classical or religious job duties but had classical or religious hiring prerequisites. See Table 4 supra, pp. 29-36; see also ¶224 supra. Rather than throw them away, KFUO repeated revised them and often made them even worse. Indeed, after the only meeting of the Board for Communications Services at which EEO arose, KFUO promptly revised three of these duty descriptions to make them even more discriminatory on the basis of religion. See ¶¶197-200 supra. Again, KFUO did not act neutrally, It discriminated affirmatively.

315. EEO Violation #7. KFUO violated §73.2080(b)(5), requiring each station to "[c]onduct a continuing review of job structure and employment practices and adopt positive recruitment, job design, and other measures needed to ensure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsiblity." At KFUO, there was no continuing or even initial EEO evaluation. At license renewal time, a station must evaluate its applicant flow to get a reading of its own compliance record. KFUO assigned the task to Paula Zika, who didn't know the difference between "hire" and "net gain." See ¶24 and n. 3 supra. Zika's befuddlement probably doesn't manifest intentional misrepresentation,51/ but it does show that KFUO assigned this seminal, once-every-seven-year task to a nice lady who, unfortunately and respectfully, was the least competent person KFUO could have found. The only "job design" was Position Guides and Duty Descriptions written to promote discrimination. See Table 4 supra, pp. 29-36. The only person who undertook any systematic review of KFUO's EEO practices was Lauher, who was afraid KFUO could lose its licenses. See ¶¶180-196 supra. His recommendations, which he sent to virtually every KFUO manager as well as to counsel, essentially went into the trash. See ¶¶197-202 supra. Thus, KFUO did not act neutrally. It discriminated affirmatively.

51/ What Zika did was very similar to the misdeeds tried in Dixie. If the six hires/fourteen hires dispute were the only matter at issue, this case would be appropriate for resolution in a manner akin to Dixie, with a finding of gross negligence and a commensurate forfeiture. See Dixie, supra, ¶119 and n. 10.

316. EEO Violation #8. KFUO violated §73.2080(c)(1), requiring each station to "[d]isseminate its equal opportunity program to job applicants and employees by (i) [p]osting notices...informing employees, and applicants for employment, of their equal employment opportunity rights...(ii) [p]lacing a notice in bold type on the employment application informing prospective employees that discrimination because of race, color, religion, national origin, or sex is prohibited; (iii) [refers to labor unions]; (iv) [u]tilizing media for recruitment purposes in a manner that...can be reasonably expected to reach minorities and women." KFUO posted discriminatory notices. See ¶110 supra. It placed a notice on an employment application form saying it reserves the right to discriminate on the basis of religion. See ¶¶152-153 supra. And it only used African American media for lower level jobs, used these media only at the very end of the license term, and then stopped using them. See ¶¶135, 139-40 supra. See Rust, supra, 53 FCC2d at 363 ¶¶30-31 (applicant promised to contact minority organizations "when suitable openings exist.") Thus, KFUO did not act neutrally. It discriminated affirmatively.

317. EEO Violation #9. KFUO violated §73.2080(c)(2), requiring each station to "[u]se minority organizations, organizations for women, media, educational institutions, and other potential sources of minority and female applicants, to supply referrals whenever job vacancies are available in its operations. For example, this requirement may be met by: (i) [p]lacing employment advertisements in media that have significant circulation among minorities residing and/or working in the recruiting area; (ii) [r]ecruiting through schools and colleges...with significant minority-group enrollments; (iii) [c]ontacting, both orally and in writing, minority and human relations organizations, leaders, and spokemen and spokeswomen to encourage referral of qualified minority or female applicants; (iv) [e]ncouraging current employees to refer minority or female applicants; (v) [m]aking known to recruitment sources in the employer's immediate area that qualified minority members and females are being sought for consideration whenever you hire and that all candidates will be considered on a nondiscriminatory basis." KFUO had 84 vacancies and only used minority recruitment sources in the 11th hour, for lower level jobs. See ¶¶135, 139-140 supra. It even used nonminority sources only very sporadically, and even then did not put an EOE notice in three Broadcasting ads. See ¶¶115-120 supra. It wrote a letter to ten entities promising job referrals, which never followed. See ¶¶126-130 supra. After renewal time, KFUO stopped doing even these few things, even while under FCC investigation for discrimination. See ¶¶139-140 supra. That is analogous to slowing down from 90 to 80 after observing a police car. Thus, KFUO did not act neutrally. It discriminated affirmatively.

318. EEO Violation #10. KFUO violated §73.2080(c)(3), requiring each station to "[e]valuate its employment profile and job turnover against the availability of minorities and women in its recruitment area. For example, this requirement may be met by: (i) [c]omparing the composition of the relevant labor area with the composition of the station's workforce; (ii) [w]here there is underrepresentation of either minorities and/or women, examining the company's personnel policies and practices to assure that they do not inadvertently screen out any group and take appropriate action where necessary. Data on representation of minorities and women in the available labor force are generally available on a metropolitan statistical area (MSA) or county basis." The only analysis KFUO did was when it defended against the Petition to Deny. That analysis was a post-hoc rationalization to defend its preexisting policy of discrimination: it imputed Lutheran requirements to virtually every job but did not explain why it did not contact African American Lutherans. See ¶¶141-150 supra. It argued that low listenership to KFUO-FM by African Americans explained its failure to have hired any in meaningful positions, see ¶¶250-217 supra, but it never used minority classical resources, a step it would have taken if it were sincere about not discriminating. See ¶151 supra. It certainly didn't use workforce statistics. By defining classical music expertise as listenership to its own programming -- inputted by a racially exclusionary staff -- KFUO assured the circularity of discriminatory output. NAACP v. FPC, 425 U.S. 662, 670 n. 7 (1976) (the EEO Rule is justified by their impact on program content.)

319. By relying on this definition, KFUO did not have to confront the fact that there is no evidence that African Americans as a group are any less interested in classical music than Whites, any less trained in classical music than Whites, any less trainable in skills supposedly requiring classical music expertise than Whites, or any less comfortable with working in a classical music environment than Whites. As explained above, this would only be a case of bad logic were it not for the inculpating presence of well established procedures, implemented by a highly sophisticated licensee, which resulted in the absence of even a single application from an African American for a top four category job. Fortunately, this affirmatively discriminatory scheme is sui generis in the radio industry.

320. EEO Violation #11. KFUO violated §73.2080(c)(4), requiring each station to "[u]ndertake to offer promotions of qualified minorities and women in a nondiscriminatory fashion to positions of greater responsibility...." KFUO maintained written records on the test scores of candidates for two of the lowest level positions, for which it recruited almost exclusively African Americans. These types of records had not been kept previously. See ¶155 supra. It also maintained a dossier on each employee, focusing on his or her religion. See ¶154 supra. Thus, the Stations' files bulged with stigmatizing material which would come back to haunt anyone eventually seeking a promotion. Such is hardly the earmark of a religion neutral and race pro-active promotion policy.

321. EEO Violation #12. KFUO violated §73.2080(b)(5), requiring a station to "[a]nalyze its efforts to recruit, hire, and promote minorities and women and address any difficulties encountered in implementing its equal employment opportunity program. For example, this requirement may be met by...[a]voiding use of selection techinques or tests that have the effect of discriminating against qualified minority groups or females...." KFUO's Position Guides and Duty Descriptions expressly contained selection criteria which had the effect of discriminating against minorities. See Table 4 supra, pp. 29-36. And as shown in ¶155 supra, KFUO used a scored scale test for two jobs for which it essentially reserved for minorities; it had not used this type of instrument previously. Thus, again, KFUO did not act neutrally. It discriminated affirmatively.

322. Consequently, the Court should conclude adversely to KFUO on all elements of Issue #1.

B. KFUO Engaged In A Massive Pattern Of Disqualifying Misrepresentations

1. KFUO's Coverup Of Its Discriminatory Practices Was Of Unprecedented Scope And Depth

323. The sheer numerosity of KFUO's misrepresentations is mind boggling; the eyes must glaze over reading them all. They are catalogued in detail in the Findings of Fact. See ¶¶218-290 supra. In the interest of saving our nation's forests, they will not be repeated here.

324. The misrepresentations took every form known to misrepresenters: statements untrue on their face; half-truths; distortions; material omissions and nondisclosures. Id.

325. Some are more material than others, but the "fact of concealment" is of greater import than the "facts concealed." FCC v. WOKO, 329 U.S. 223, 227 (1946).

326. They also occurred in every context: statements in the 1982 applications which were never amended when they were clearly inoperative; statements in the 1989 applications which were not true during the preceding year and were not followed during the remainder of the license term; statements in response to the Petition to Deny; statements in response to the Bilingual investigation; statements in direct case testimony; and statements on the witness stand in the presence of the Judge.

327. Since no arguments were made by counsel without the knowledge of KFUO officials, KFUO's arguments are all attributable to KFUO and thus must all be deemed to be intentional.

328. Every KFUO misrepresentation was motivated by a desire to convince the Commission to look the other way. Every "error" in the record cut in the licensee's favor. The misrepresentations were "result-oriented and not the product of confusion or innocent error." Evansville Skywave, Inc., 9 FCC Rcd 2539, 2541-42 ¶20 (1994). Compare Dixie, supra, ¶128 (there was no logical motive for Dixie's misconduct.)

329. And as shown at ¶¶306-307 supra, the use of misrepresentations to advance pretextual arguments is profoundly indicative of deliberate discrimination as well. Here, the substantive violations were repeated, continuous and systematic, and then were the subject of flagrant misrepresentations. This is a familiar pattern. Sea Island Broadcating Corp. v. FCC, 627 F.2d 240 (D.C. Cir.), cert denied, 449 U.S. 834 (1980); Lorain Journal v. FCC, 351 F.2d 524 (D.C. Cir. 1965). It is unacceptable in a system of regulation which holds broadcasters to a higher standard than the morals of the marketplace. See Greater Boston Television Corp. v. FCC, 447 F.2d 841 (D.C. Cir. 1971) (subsequent history omitted).

330. The law could not be clearer on what the Commission must do when it is presented with an international panorama of misdeeds. Revocation or nonrenewal may be based solely upon a pattern of deliberate misrepresentation. RKO General, Inc. v. FCC, 670 F.2d 231, 233 (1981); Pass Word, Inc., 76 FCC2d 465 (1980); WMOZ, Inc., 36 FCC 202, 237-39 (1964). The Commission must be able to rely on the completeness and accuracy of the representations and submissions made to it. WHW Enterprises, Inc. v. FCC, 753 F.2d 1132, 1139 (D.C. CIr. 1985). Regulation is impossible otherwise. Whether or not KFUO discriminated, KFUO's applications must be denied for misrepresentations of elephantine weight and rabbitlike numerosity.

2. KFUO Had Full Notice Of The Scope Of The Commission's Concerns

331. Every broadcaster is on notice to tell the truth. Character Policy Statement, 102 FCC2d 1179, 1201-11 (1986). And if a licensee doesn't read the FCC Reports and the FCC Record, it can read the application forms it signs. The obligation to be truthful and complete is contained in the instructions to every one of them.

332. The HDO does not mention each and every misrepresentation now known to have been committed. It does mention quite a number of them, including KFUO's false claims of active minority recruitment, KFUO's failure to disclose the genuine nature of Lauher's July 18, 1989 form letter, KFUO's failure to disclose that it used minority recruitment sources only for lower level positions, KFUO's failure to disclose the Concoria arrangement, and KFUO's failure to disclose its requirements for theological or classical training. HDO, pp. 924-25, ¶¶28-29. The HDO also hit on the nose KFUO's misrepresentation of a classical music requirement for sales positions when "the record fails to demonstrate that all, or even most, salespersons hired during the license term met that requirement." HDO, p. 925, ¶30. See discussion at ¶32 supra.

333. The HDO's iteration of specific instances of misrepresentations in the HDO must be seen as illustrative rather than exhaustive of the matters upon which the Court can inquire and render findings. The wording of the misrepresentation issue, and the Commission's language in designating it, were sufficiently broad that the issue should be deemed applicable to every EEO-related misrepresentation KFUO had made or might later make. HDO, p. 925, ¶¶30-32. A thorough but not exhaustive notice is adequate where, as here, a "sophisticated" wrongdoer "successfully conceal[s] the details" of his wrongdoing," Christidis v. First Pennsylvania Mortgage Trust, 717 F.2d 96, 100 (3d Cir. 1983). Moreover, in a case like this one, "[w]hen the transactions are numerous and take place over an extended period of time, less specificity is required." In re Catanella and E.F. Hutton and Co. Securities Litigation, 583 F.Supp. 1388, 1398 (E.D.Pa. 1984).

334. Notice is not a trivial matter. An unfortunate part of African American history is the use of star chamber, Soviet-style proceedings in southern state courts as a predicate to the chain gang, the death penalty or the extralegal lynch mob. Thus, the NAACP has been the strongest of proponents of expansive notice as an essential element of due process in both criminal and civil matters.

335. In this case, the HDO has done exactly what the NAACP has historically encouraged tribunals to do: (1) conduct a thorough investigation; (2) set out meaningful and expansive illustrations of the type of misconduct alleged; (3) express the charges in an unequivocal manner; (4) assign the burden of proof openly, on the record; and (5) hold a trial without limiting an accused's opportunity to develop its case as it sees fit. Thus, the NAACP is satisfied that KFUO has had ample notice of the scope and depth of the charges against it, and has been afforded extraordinarily wide latitude in defending itself.

336. The NAACP did not have to confront KFUO's witnesses with the details of each and every misrepresentation. The misrepresentations were self evident. KFUO had the burden of proof in this case, HDO, p. 926 ¶33, and properly so, Office of Communication of the United Church of Christ v. FCC, 425 F.2d 543, 548 (D.C. Cir. 1969). Thus it was KFUO's responsibility to attempt to reconcile its earlier misrepresentations, or fess up to them -- and certainly to eschew making more misrepresentations in its direct case and in its witness' oral testimony. See ¶¶279-290 supra. Compare Dixie, supra, in which the licensee voluntarily disclosed all embarrassing facts before trial, a scenario "completely inconsistent with an intent to mislead or deceive" and exactly the opposite of KFUO's predesignation and postdesignation behavior. Id, ¶127.

C. There Are No Mitigating Factors

1. Reliance On Counsel Is No Excuse

337. Counsel's errors belong to the client. Carol Sue Bowman, 6 FCC Rcd 4723 (1991). The only exception arises when the lawyer's behavior is bizarre or criminal. See, eg., Georgia Public Telecommunications Commission, 7 FCC Rcd 2942, 2949 ¶36 (Rev. Bd. 1992) and Ponchartrain Broadcasting Co., Inc., 5 FCC Rcd 3991, 3993 ¶11 (Rev. Bd. 1990) (Tom Root cases; subsequent histories omitted). However, Reed Miller and Marcia Cranberg are neither crooks nor fools. They just did not know the full extent of KFUO's misdeeds. See ¶211 supra.

338. Had KFUO's managers read even one of Reed Miller's many letters and followed his advice, the Stations' EEO violations would have been corrected. As noted, KFUO paid for the letters, notwithstanding its claim of financial distress. See ¶210 supra. It follows that either (1) every KFUO manager who saw these letters was unqualified to hold his job, since he did not read these repeated documents paid for with station funds; or (2) at least one of the letters was read by somebody, but KFUO did nothing because it fully intended not to hire African Americans in top four category positions; or (3) both.

339. Furthermore, nothing prevented this sophisticated licensee from obtaining a second opinion. Certainly such an opinion should have been obtained after the issuance of the EEO Branch's record fourth Bilingual letter -- the one which KFUO's former attorney characterized as containing "grave charges" and was "astonished" to receive." See ¶217 supra.

2. The Fact That The Stations Are Owned By A Church Is Not A Mitigating Factor

340. It is easy to dispose of the legal question of whether church licensees are immune from civil enforcement of the Communications Act. They aren't. See Faith Center, Inc., 82 FCC2d 1 (1980); PTL of Heritage Village Church and Missionary Fellowship, Inc., 71 FCC2d 324 (1979); King's Garden, Inc., 38 FCC2d 339, 341 (1972), aff'd, 498 F.2d 51 (D.C. Cir. 1974); cf. Bob Jones University, 42 FCC2d 522 (1973).

341. Here, KFUO posited religious qualifications for quite a number of jobs. As shown herein, some of those supposed qualifications were highly suspect; for example, the requirement that an engineer or a receptionist attend a particular church in order to be considered qualified to string cable or answer the phone. See King's Garden, supra, which, as Cranberg correctly advised Lauher, affirmed a prohibition on discrimination where a job has no substantial connection with religious-related program content. See ¶214-215 supra.

342. But while the Court should make findings and draw conclusions on these matters for review purposes, they aren't essential to the decision the Court must render. There are smoking guns: Position Guides and Duty Descriptions which iterate no religious duties for fifteen jobs but nonetheless manifest religious requirements or preferences for employment. That's not First Amendment protected activity. See Table 4, supra, pp. 29-36, and ¶224 supra. It's plain old discrimination.